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8 **BEFORE THE**
BOARD OF REGISTERED NURSING
9 **DEPARTMENT OF CONSUMER AFFAIRS**
10 **STATE OF CALIFORNIA**

11 In the Matter of the Accusation Against:

12 **MARIA ESTHER AGUILAR**
13 **1250 Park Street # 2**
14 **Alameda, CA 94501**
Registered Nurse License No. 535853

15 Respondent.

Case No. **2011-243**
ACCUSATION

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17 Complainant alleges:

18 **PARTIES**

19 1. Louise R. Bailey, M.Ed., RN ("Complainant") brings this Accusation solely in her
20 official capacity as the Interim Executive Officer of the Board of Registered Nursing, Department
21 of Consumer Affairs.

22 2. On or about August 22, 1997, the Board of Registered Nursing issued Registered
23 Nurse License Number 535853 to Maria Esther Aguilar ("Respondent"). The Registered Nurse
24 License was in full force and effect at all times relevant to the charges brought herein and will
25 expire on May 31, 2011, unless renewed.

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JURISDICTION

3. This Accusation is brought before the Board of Registered Nursing ("Board"), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.

4. Section 2750 of the Code states:

"Every certificate holder or licensee, including licensees holding temporary licenses, or licensees holding licenses placed in an inactive status, may be disciplined as provided in this article [Article 3 of the Nursing Practice Act (Bus. & Prof Code, ' 2700 et seq.)]. As used in this article, "license" includes certificate, registration, or any other authorization to engage in practice regulated by this chapter. The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of Title 2 of the Government Code [the Administrative Procedure Act], and the board shall have all the powers granted therein."

5. Section 2764 of the Code provides, in pertinent part, that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary proceeding against the licensee or to render a decision imposing discipline on the license.

STATUTORY AND REGULATORY PROVISIONS

6. Section 2761 of the Code states:

"The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

"(a) Unprofessional conduct, which includes, but is not limited to, the following:

"(1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions."

7. California Code of Regulations, title 16, section 1442, states:

"As used in Section 2761 of the code, 'gross negligence' includes an extreme departure from the standard of care which, under similar circumstances, would have ordinarily been exercised by a competent registered nurse. Such an extreme departure means the repeated failure to provide

1 nursing care as required or failure to provide care or to exercise ordinary precaution in a single
2 situation which the nurse knew, or should have known, could have jeopardized the client's health
3 or life."

4 8. California Code of Regulations, title 16, section 1443, states:

5 "As used in Section 2761 of the code, 'incompetence' means the lack of possession of or the
6 failure to exercise that degree of learning, skill, care and experience ordinarily possessed and
7 exercised by a competent registered nurse as described in Section 1443.5."

8 9. California Code of Regulations, title 16, section 1443.5 states:

9 "A registered nurse shall be considered to be competent when he/she consistently
10 demonstrates the ability to transfer scientific knowledge from social, biological and physical
11 sciences in applying the nursing process, as follows:

12 "(1) Formulates a nursing diagnosis through observation of the client's physical condition
13 and behavior, and through interpretation of information obtained from the client and others,
14 including the health team.

15 "(2) Formulates a care plan, in collaboration with the client, which ensures that direct and
16 indirect nursing care services provide for the client's safety, comfort, hygiene, and protection, and
17 for disease prevention and restorative measures.

18 "(3) Performs skills essential to the kind of nursing action to be taken, explains the health
19 treatment to the client and family and teaches the client and family how to care for the client's
20 health needs.

21 ...

22 "(5) Evaluates the effectiveness of the care plan through observation of the client's physical
23 condition and behavior, signs and symptoms of illness, and reactions to treatment and through
24 communication with the client and health team members, and modifies the plan as needed.

25 "(6) Acts as the client's advocate, as circumstances require, by initiating action to improve
26 health care or to change decisions or activities which are against the interests or wishes of the
27 client, and by giving the client the opportunity to make informed decisions about health care
28 before it is provided."

1 COST RECOVERY

2 10. Section 125.3 of the Code provides, in pertinent part, that the Board may request the
3 administrative law judge to direct a licentiate found to have committed a violation or violations of
4 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
5 enforcement of the case.

6 MEDICATIONS

7 11. "Zoloft" is a prescribed medication used in the treatment of depression and is
8 classified as a dangerous drug within the meaning of Code section 4022. It is known to increase
9 the risks of depression and suicidal thinking in adolescents and thus the dosage of Zoloft must be
10 carefully titrated in this population.

11 12. "Advair" is an inhaled prescribed medication used for the treatment of asthma and is
12 a dangerous drug within the meaning of Code section 4022.

13 13. "Concerta ER" is a prescribed for the treatment of Attention Deficit Disorder and is
14 classified as a dangerous drug within the meaning of Code section 4022.

15 STATEMENT OF FACTS

16 14. At all relevant times set forth herein, Respondent was employed as a Clinical Nurse II
17 at the Juvenile Justice Center for the County of Alameda's Probation Department and the
18 Alameda County Medical Center. As a registered nurse with this facility, Respondent was
19 required to comply with Juvenile Justice Health Services ("JJHS") nursing protocols and the
20 Standing Medical Orders for Juvenile Hall established by the Alameda County Probation
21 Department.

22 15. On January 11, 2006, Respondent was assigned to Patient 1, who was on Zoloft 50
23 milligrams to be administered once per day in the morning. On the Medication Administration
24 Record, Respondent erroneously transcribed that Patient 1 was to receive Zoloft 75 milligrams
25 and omitted the time that the medication was to be administered.

26 16. On February 28, 2006, Patient 2 was prescribed Advair 250/50, one puff to be taken
27 twice a day for asthma. Respondent noted the orders for the Advair, but neglected to transfer
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1 these orders to Patient 2's Medication Administration Record. Thus, administration of this
2 medication was delayed for over 24 hours.

3 17. On March 17, 2006, Respondent noted that Patient 3 was taking a birth control pill
4 known as Alesse. However, in obtaining this information, Respondent failed to note the name of
5 the physician who had prescribed this medication, when the prescription had been filled and the
6 name of the pharmacy where Patient 3 had filled this medication. Respondent also failed to note
7 when Patient 3 had last taken this medication and failed to note this medication on her
8 Medication Administration Record.

9 18. On March 30, 2006, Respondent entered information on Patient 4's intake form.
10 Patient 4's father advised Respondent that each day the minor was taking two tablets of Concerta
11 ER 27 milligrams. However, the prescription bottle for this medication indicated that Patient 4
12 was to take only one tablet per day. Despite the discrepancy in the dose and without a physician's
13 order, Respondent recorded on Patient 4's Medication Administration Record that he was to take
14 two tablets of Concerta ER 27 milligrams per day. Respondent's actions were in violation of the
15 policies and procedures at JJHS and the Standing Medical Orders for Juvenile Hall established by
16 the Alameda County Probation Department.

17 19. On April 26, 2006, Respondent evaluated Patient 5 who complained of a history of
18 anemia for which she was taking iron supplements. Instead of requesting an updated blood test to
19 evaluate Patient 5's anemia, Respondent relied on test results done on February 27, 2006, and
20 recommended that Patient 5 take Ferrous Sulfate 325 milligrams, twice a day. Respondent also
21 failed to refer Patient 5 to a clinician for an appropriate examination and treatment for the anemia
22 as mandated by JJHS policy.

23 20. On April 26, 2006, Respondent diagnosed Patient 5 with allergic rhinitis for which
24 she prescribed Claritin 10 milligrams to be taken once per day. The history obtained from Patient
25 5 and Respondent's examination failed to support her diagnosis and/or prescription for Claritin.
26 Respondent's actions were in violation of the policies and procedures at JJHS and the Standing
27 Medical Orders for Juvenile Hall established by the Alameda County Probation Department.
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21. On May 13, 2006, Respondent engaged in unprofessional and inappropriate conduct in regards to a positive tuberculin test of a minor patient. The minor had a TB test done on May 12, 2006, and the following day was noted to have a "red and swollen arm" at the test site. Respondent dismissed the group counselor's request for palliative treatment of the minor and was demeaning and dismissive in response to the counselor's concern that the minor's positive test exposed the staff and patients to tuberculosis.

22. On June 8, 2006, Respondent documented that Patient 6 had a long history of alcohol abuse noting "hard liquor 1/2 pint every day for 1 year," with his last drink earlier in the day. Respondent did not schedule Patient 6 to be seen the next day by a clinician to evaluate his condition and/or prescribe medications to prevent complications from his sudden withdrawal of alcohol. Patient 6 was not seen until four days later, increasing his risk for seizures, delirium tremens or other harmful effects in violation of the policies and procedures at JJHS.

23. On June 13, 2006, Respondent performed an intake screen on Patient 7 who complained of pain on urination. Respondent document an abnormal urine dipstick results (large amount of white blood cells, moderate amount of blood and protein). However, her assessment was that Patient 7 was a "healthy adolescent." Respondent referred Patient 7 to the Family Planning Clinic for a full evaluation but failed to calendar the patient in on this clinic's schedule on June 14, 2006. Patient 7 was ultimately seen in the Family Planning Clinic and was diagnosed with gonorrhea.

FIRST CAUSE FOR DISCIPLINE

(Gross Negligence and/or Incompetence – Failure to Correctly Transcribe Medication Orders)

24. Respondent is subject to disciplinary action for gross negligence and/or incompetence pursuant to Code section 2761, subdivision (a)(1), in that she failed to transcribe the correct dose of Zoloft prescribed for Patient 1, thus exposing the minor to serious side-effects of this medication as set forth above in paragraphs 11, 14 and 15.

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1 FIFTH CAUSE FOR DISCIPLINE

2 (Unprofessional Conduct – Dismissive Conduct Towards Staff)

3 28. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
4 Code section 2761, subdivision (a), in that she responded in a demeaning and dismissive manner
5 to a group counselor's concerns regarding exposure of staff and other patients to a minor who
6 tested positive for tuberculosis as set forth above in paragraph 21.

7 SIXTH CAUSE OF ACTION

8 29. Respondent is subject to disciplinary action for unprofessional conduct pursuant to
9 Code section 2761, subdivision (a), in that she failed to comply with the of the policies and
10 procedures at JJHS and the Standing Medical Orders for Juvenile Hall established by the
11 Alameda County Probation Department as set forth above in paragraphs 18, 19, 20 and 22.

12 PRAYER

13 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
14 and that following the hearing, the Board of Registered Nursing issue a decision:

15 1. Revoking or suspending Registered Nurse License Number 535853, issued to Maria
16 Esther Aguilar.

17 2. Ordering Maria Esther Aguilar to pay the Board of Registered Nursing the reasonable
18 costs of the investigation and enforcement of this case, pursuant to Business and Professions
19 Code section 125.3.

20 3. Taking such other and further action as deemed necessary and proper.

21 DATED: 9/16/10

22 Louise R. Bailey
23 LOUISE R. BAILEY, M.ED., RN
24 Interim Executive Officer
25 Board of Registered Nursing
26 Department of Consumer Affairs
27 State of California
28 Complainant

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